IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9275 OF 2005

The Executive Engineer,
B & C Deptt.,
Miraj, Dist. Sangli & anr. ... Petitioners

V/s

Shri Riyaj Nasir Daryawardi ... Respondent

Mr. Deepak Patil, A.G.P. for the petitioners.

Mr. M.S. Topkar for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 2ND FEBRUARY, 2006

P.C.:

1. The petitioner has preferred this petition against the judgment and order passed by the Industrial Court, Sangli, dated 2.11.2004 dismissing the revision application under Sec. 44 of the MRTU & PULP Act, 1971 and confirming the judgment and order passed by the Judge, Labour Court, Sangli dated 30.10.1996 partly allowing the complaint of the respondent with declaration that the petitioner was engaged in unfair labour practices and was directed to cease and desist

the unfair labour practices. It was further directed that petitioner shall reinstate the respondent in employment with continuity of service and half back wages.

2. The complainant filed the complaint of unfair labour practices against the respondents under Item 1 (a), (b), (d), (e) and (f) of Schedule IV of the MRTU & PULP Act challenging his oral termination.

3. The case of the complainant, in short, was that-

. The complainant was in the employment of the present petitioner from 5.11.1987 as daily rated watchman. It was further allegation of the complainant that the respondents by oral order terminated his services w.e.f. 21.9.1988. According to him, he has completed 240 days of service, however, the respondents, in violation of Sec. 25-F of the I.D. Act and without giving any notice or notice pay and in violation of principles of natural justice terminated the services and thereafter appointed new worker and thereby the petitioner engaged in unfair labour practices and hence the request for reinstatement as well as continuity of service and back wages.

The respondent challenged the contention having relationship between parties as employer and employee. It was further denied that the complainant had completed 240 days with the present petitioner and after his termination had appointed any other person.

4. The Labour Court adjudicated the dispute on merits after recording the evidence. The complainant by his application for reinstatement requested the Labour Court to direct the respondents to produce the documents, namely, muster rolls from 21.10.1987 to 20.9.1988 and the respondent had produced zerox copies of musters with list Exh.C-13 for the period from 21.10.1987 to 20.8.1988.

5. The Labour Court came to the conclusion on the basis of the available evidence that the complainant had completed 240 days of his service during his service of one year. The evidence was also sufficient to show that the complainant had proved his allegation regarding unfair labour practice at the hands of the present petitioners and, as such, the complaint was partly allowed and direction was issued to reinstate the

complainant in employment with continuity of service and half back wages.

6. The revision application was adjudicated by the lower Court and on the basis of evidence available on record, the Labour Court's order was confirmed holding that no interference was called for under Sec. 44 of the MRTU & PULP Act and, as such, the revision application was dismissed. Hence the present petition.

7. At the outset, it may be noted that there is absolutely no reason why this Court should interfere in the orders passed by both the Courts below especially when it is seen that documentary as well as oral evidence on record has established beyond reasonable doubt that the complainant was in continuous service of more than 240 days and, as such, the oral termination of the complainant was rendered illegal.

8. The learned counsel for the petitioner sought to put reliance on the ruling of the Supreme Court in the case of **Surendranagar District Panchayat & anr. v/s Jethabhai Pitamberbhai, reported in 2006 (1) Mh.L.J. 64,** wherein it was held by the Apex Court that the burden of proof lies on the workman to show that he had

worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer. In the present case, as noted earlier, the evidence on record is sufficient to show that this aspect of the continuity of service of the complainant for more than 240 days and the fact that there was oral termination of his service which was per se illegal.

9. The learned counsel for the petitioners, however, urged that the order regarding payment of half back wages made by the Labour Court is not sustainable in view of the admission of the complainant to the effect that he used to help his father in his business of tailoring shop. Firstly it may be noted that helping one's father in his business cannot amount to gainful employment at all. Moreover, as the law stands today, even if it is doubtful whether employee was gainfully employed or not, still the grant of 50% back wages is legal and proper and, therefore, I do not see any reason to interfere with such order also.

10. In the result, there is no merit in the writ petition and accordingly the petition stands dismissed

with no order as to costs.

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